

Message Text

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USCINCEUR VAIHINGEN GER ECJ4/7//

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E.O. 11652: GDS

TAGS: MASS, EFIN, CG

SUBJECT: BROOKE AMENDMENT IMPACT ON FMS CASES

REF: (A) KINSHASA 8742 (B) SECDEF DTG 121611Z AUG 78

(C) STATE 124355 (D) KINSHASA 8784

1. REF B SUMS UP PRACTICAL IMPACT OF BROOKE AMENDMENT ON
FMS CASES FOR ZAIRE. REF C PROVIDES BROADER CONTEXT FOR
CONSIDERATION OF ARREARAGES QUESTION. UNFORTUNATELY,
IN CASE OF SUPPLY SUPPORT AGREEMENT CASE, PRIOR APPROVAL
IN PRINCIPLE OF USE OF FMS FUNDS DOES NOT CONSTITUTE
OBLIGATION OF FUNDS AND THEREFORE CANNOT OVERRIDE LEGISLA-
TIVE PROHIBITION AGAINST USE OF SUCH FUNDS SUBSEQUENT TO
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DATE ON WHICH ARREARAGES EXCEED ONE YEAR. WE RECOGNIZE
POSSIBILITY THAT THIS COULD BE A RECURRING PROBLEM, AND
BELIEVE LONG-TERM SOLUTION MUST BE IN IMPROVED MANAGEMENT
OF GOZ FINANCIAL OBLIGATIONS.

2. SO LONG AS WE ARE SATISFIED THAT GOZ IS TAKING APPROPRIATE AND SUFFICIENT STEPS TO GET FINANCIAL HOUSE IN

ORDER, WE WOULD NOT ANTICIPATE SUSPENDING PROCESSING OF REQUESTS FOR NEW FMS CASES, WHICH WOULD THEN BE SENT TO ZAMISH. FROM A PRACTICAL POINT OF VIEW, IF GOZ INTENDS TO PAY FOR A CASE WITH FMS CREDIT, IT MIGHT BE PREFERABLE TO WITHHOLD PRESENTATION OF LOA'S TO GOZ UNTIL SUFFICIENT PAYMENT HAS BEEN MADE TO ELIMINATE BROOKE AMENDMENT RESTRICTION, AS SUGGESTED REF A, PARA 6. THIS IS NOT A LEGAL REQUIREMENT, HOWEVER, AND IF MISSION DEEMS IT USEFUL TO PRESENT CASES TO GOZ UPON RECEIPT YOU MAY DO SO. GOZ MUST UNDERSTAND, HOWEVER, THAT EVEN WHEN IT ACCEPTS A LETTER OF OFFER BY SIGNING LOA, CASE IS NOT IMPLEMENTED UNTIL INITIAL PAYMENT OF FUNDS IS RECEIVED.

3. REGARDING REF D, EMBASSY IS CORRECT THAT WHEN FUNDS ARE RECEIVED THIS WILL REMOVE BROOKE AMENDMENT OBSTACLE TO OBLIGATION OF FUNDS. OUR EXPERIENCE HAS SHOWN, HOWEVER, THAT MANY DAYS MAY PASS (IN ONE RECENT CASE INVOLVING ANOTHER AFRICAN COUNTRY, SEVERAL WEEKS) BETWEEN REQUEST BY HOST GOVERNMENT TO TRANSFER FUNDS AND ACTUAL ARRIVAL OF FUNDS IN HANDS OF USG. WE WILL NOTIFY YOU WHEN FUNDS HAVE ARRIVED. IN THIS REGARD, IT IS EXTREMELY IMPORTANT THAT HOST GOVERNMENT FOLLOW INSTRUCTIONS FOR REMITTING PAYMENT AS PROVIDED IN QUARTERLY BILLING STATEMENTS, TO INSURE THAT FUNDS ARE NOT MISDIRECTED WITHIN USG. GOZ HAS FOLLOWED PROPER PROCEDURE IN THIS CASE.

CHRISTOPHER
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